offense against the law none is confessed. Fatal defects in indictments may be raised for the first time on appeal. *Pattee v. State*, 109 Ind. 545; *Cancerni v. People*, 18 N. Y. 128. But where the defect is merely formal and curable by amendment it cannot be raised for the first time on appeal. *People v. Kelly*, 99 Mich. 82. So an objection that an indictment charging two persons with a misdemeanor in running a horse race in the street of a town is insufficient, because it does not allege that defendants ran together, is too late, if taken for the first time on appeal. *King v. State*, 3 Tex. App. 7. But failure to demur to an indictment for burglary which charges that the defendants entered, etc., with intent to commit a felony, without stating what particular felony, does not waive the objection. *People v. Nelson*, 58 Cal. 104. And (as in case at hand) where defendant pleaded guilty and was convicted without moving to quash, or in arrest, or reserving any exception, it was held in *Henderson v. State*, 60 Ind. 296, that the indictment might be questioned in the first instance in the Appellate Court on assignment of error, and several courts hold that the sufficiency of an indictment may be questioned for the first time in the Supreme Court on appeal. *O'Brien v. State*, 63 Ind. 242; *Hays v. State*, 77 Ind. 450; *State v. Caldwell*, 112 N. C. 854.

Criminal Law—Right of Accused to Confront Witnesses—Constitutional Provision.—Cremeans v. Commonwealth, 52 S. E. 362 (Va.).—*Held*, that it is not error to force the accused into trial in the absence of his witnesses, when it appears to the court that the motive is a mere pretext for delay. Caldwall, J., *dissenting*.

The tendency has been to support this proposition. *Hooker v. Rogers*, 6 Cowen 577; *King v. Pearce*, 40 Mo. 223; *The King v. D'Eon*, 1 Bl. Rep. 510. The rule is the same in criminal cases as in civil cases. *People v. Vermilyea*, 7 Cowen 383; *The King v. D'Eon*, *supra*. The motion must show due diligence to procure the testimony, and that there is a reasonable probability that it can be obtained; *Robinson v. Glass*, 94 Ind. 211; and that it can be procured in a reasonable time. *Brown v. Moran*, 65 How. Pr. 349. The applicant must know the witnesses' whereabouts, *Carberry and Case v. Warrell*, 68 Miss. 573. The Massachusetts' courts seem to hold that the witness must be within the jurisdiction of the court. *Com. v. Millard*, 1 Mass. T. R. 6.

Dead Bodies—Mutilation—Action by Surviving Husband.—Jackson v. Savage et al., 96 N. Y. Supp. 366.—*Held*, that a husband has a right of action for the dissection of the body of his deceased wife without his permission or without the permission of his wife given during her lifetime.

The question as to whether a husband or wife has a right of action for the mutilation of the remains of the deceased has been much discussed. It resolves itself into a question of property in a dead body. There was at common law no such right of property. Lord Coke is reported as saying: "*Cadaver nullius ni bonis.*" Blackstone says,: "Though the heir has a property in the monument and escutcheons of his ancestor, he has none in his dead body or ashes." 2 Bl. Com. 249. Wharton says: "*Corpus humanum non recepit estimationem.*" In support of this view, *Griffith v. Chorlotte C. & A. R. Co.*, 23 S. C. 25, held that an administrator of a deceased person had no right of action for the mutilation of the body of his intestate. However, to-day the great weight of authority is to the effect that there is such property, *quasi*-property, or interest in the dead body of a human being as to sustain a civil action for its wilful mutilation. *Larson v. Chase*, 47 Minn. 307, held that a widow has a right of action for the unlawful mutilation of the remains

of her dead husband. This ruling seems to be more in consonance with our enlightened and humane views.

DEED—DELIVERY—RIGHT OF RECALL.—NOBLE V. TIPTIN ET AL., 76 N. E. 151 (ILL.).—*Held*, that where a grantor encloses a deed in an envelope and gives it to a custodian to be delivered after grantor's death unless recalled by him, there is no delivery of the deed, and it never becomes operative, although delivered by the custodian after the grantor's death.

In general, a deed delivered by the grantor to a third person with directions to have it handed over to the grantee immediately after his death is valid; *Latham v. Udell*, 38 Mich. 238; even though given to wife of grantor, and grantor expressed dissatisfaction with terms of same two days before his death. *Squires v. Summers*, 85 Ind. 252. But, if grantor does not part with control by act, word, or both, the subsequent delivery after his death is not valid. It was held in *Morse v. Slason*, 13 Vt. 296, that where a deed is delivered to one in trust for the grantee to take effect at the grantor's death unless he shall otherwise direct during his lifetime, and he dies without giving any further directions, the deed, at the death of the grantor, takes effect as his deed from the first delivery, it being said that a deed of this character was in the nature of a testamentary disposition of real estate and was revocable without any express reservation of that power. *Belden v. Carter*, 4 Am. Dec. 185. But the weight of authority is overwhelmingly to the effect that the grantor must loose control over the deed.

DIVORCE—COUNSEL FEES—ALLOWANCE TO WIFE.—DEAN V. DEAN, 96 N. Y. SUPP. 472. Plaintiff's wife had left him and having obtained a divorce valid in Ohio but void in New York, she married in Ohio. Under oath she denies charges of adultery and asks for counsel fees. *Held*, that the above facts are no bar to her right to counsel fees.

It is a well established rule that the court will make allowance to the wife for the prosecution of a divorce suit, whether the bill be filed by or against her. *Amos v. Amos*, 4 N. J. Eq. 171; *Ex parte King*, 27 Ala. 387; unless there is an undenied charge of adultery against her. *Bissell v. Bissell*, 3 How. Prac. 242. Emphasis is laid on the fact that the wife must not be wholly in the wrong. *Strong v. Strong*, 1 Abb. Prac. N. S. (N. Y.) 358; *Miller v. Miller*, 43 How. Prac. 125. So the case in hand presents an apparent contradiction to the principle in the case of *Munson v. Munson*, 60 Hun. (N. Y.) 189, where it was laid down upon good authority that a marriage in a foreign state where a valid divorce had been obtained, was ground for divorce on charge of adultery if in original domicile the divorce was void. In *Blake v. Blake*, 80 Ill. 523, it is shown that the allowance is largely within the discretion of the court. But if the wife cannot easily defray expenses the allowance must be made. *Douglas v. Douglas*, 13 Abb. Prac. (N. S.) 291. So too, the pecuniary condition was made a test in *Miller v. Miller*, 1 Wkly. N. Cas. 415.

EVIDENCE—OWNERSHIP OF PROPERTY—CONCLUSIONS.—HAWLEY V. BOND, 105 N. W. 464 (S. D.).—In an action to recover property levied on, alleged to belong to plaintiff and not to the judgment debtor, plaintiff was asked who was the owner at the time of the levy, over an objection that the question called for the witnesses' opinion, and not for a fact. *Held*, that the plaintiff was entitled to testify that the property was hers.